

Editorial note: Certain information has been redacted from this judgment in compliance with the law.

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION ,PRETORIA

- (1) NOT REPORTABLE
- (2) NOT OF INTEREST TO OTHER JUDGES
- (3) REVISED.

CASE NO: 94751/16

22/2/2019

In the matter between:

ADELE VAN BOSCH

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MOSOPA. AJ: INTRODUCTION

[1] The plaintiff, Ms Adele van Bosch, an adult female person, was involved in a motor collision on 25 September 2013 at approximately 16:30, at or near the T-junction of Alwyn Street and Volkspele Drive, Pellissier, Bloemfontein. At the time of the collision the plaintiff was the driver of the motor vehicle with registration numbers and letters [...] collided with the motor vehicle driven by N V Boshoff (*"insured driver"*), with registration number and letters [...] (*"insured vehicle"*).

[2] The plaintiff is now suing the defendant (*"Fund"*) in terms of the provisions of section 170 of the Road Accident Fund Act, Act No 56 of 1996 (*"Act"*), as a

result of this collision, for bodily injuries she suffered.

[3] At the commencement of the proceedings the parties agreed on a separation of the issue of merit and issue of quantum in terms of section 33(4) of the Act and further agreed that the issue of quantum be postponed *sine die*. I then ordered such separation in terms of section 33(4) of the Act.

FACTUAL BACKGROUND

[4] The plaintiff avers in paragraph 5 of her particulars of claim as follows:

" 5. *The sole cause of the accident was the negligence of the insured driver, which was negligent in one or more of the following respects:*

5.1 The insured driver:

- 5.1.1 failed to keep a proper and/or adequate lookout;*
- 5.1.2 failed to keep the motor vehicle he was driving under proper control;*
- 5.1.3 failed to ensure that the motor vehicle was roadworthy;*
- 5.1.4 failed to pay due regard to other road-users and more specifically to that of the plaintiff, by driving in such a way resulting in the vehicle being driven by him to collide with the vehicle being driven by the plaintiff;*
- 5.1.5 failed to pay due regard to the prevailing conditions on the road he was travelling on;*
- 5.1.6 failed to pay due regard to the rights, safety and wellbeing of other road-users and more specifically that of the plaintiff;*
- 5.1.7 failed to prevent the accident when, by the exercise of due and reasonable care he could and should have done so;*
- 5.1.8 failed to ensure that the motor vehicle is in good working order and that the motor vehicle's tyre and brakes are in good order;*
- 5.1.9 failed to apply the brakes of the motor vehicle he was*

travelling in sufficiently alternatively timeously further alternatively at all;

5.1.10 failed to prevent the collision where he could have done so with the exercising of reasonable care and skill;

5.1.11 drove too fast given the prevailing road conditions."

[5] At paragraph 6 the plaintiff averred as follows:

"6.1 As a result of the collision and aforesaid negligence by the insured driver, the plaintiff sustained inter alia the following injuries (hereafter 'the injuries')::

6.1.1 disc herniation cervical spine at level C5/C6 vertebrae."

EVIDENCE

[6] The plaintiff testified in this matter and called one witness Ms Sune Pike her daughter, who was travelling with her as her passenger on the day of the collision. The defendant closed its case without calling any witness.

[7] The plaintiff, Ms Adele van Bosch, testified that on 25 September 2013 she went to a filling station, to fill petrol in her motor vehicle a white Toyota Yaris as she was supposed to start work the following day. The weather on that day was clear and visibility was good and was traveling on the tarred road, which was in a good condition. As she was coming out of the shopping complex she drove into a stop sign and stopped her vehicle. The road she was supposed to drive in after stopping, is a road with two lanes travelling in the same direction, travelling from East to West. As she intended turning right, she could not use that road but she had to pass it drove straight into a slipway so that she can execute her turn to the right on another way with two lanes travelling in the same direction. As she was still stationary at the stop sign a red VW Chico motor vehicle collided with her vehicle by hitting her vehicle from the front and the driver's door, which could not open as a result of the collision. There was nothing she could do to avoid the collision as her vehicle was stationary at that stage. She then sustained injuries and was operated on her neck.

[8] In cross-examination, she testified that after stopping at the stop sign, she looked to her left and her right. She could not see traffic properly as there was another vehicle turning into the slipway and the other vehicle was stationary on the side of the road. She was wearing spectacles on that day. She further testified that the insured driver had a right of way and was travelling on the right hand of the road that travels past the stop sign. She did not see the insured vehicle and it was put to her that the reason that she could not see the insured vehicle is that she did not keep a proper lookout. It was further put to her that she drove straight into the stop sign not stopping and collided with the insured driver. That is why her vehicle was damaged on the right front side and the insured vehicle on the left front side.

[9] After the testimony of Ms Van Bosch the plaintiff called Ms Sune Pike as a witness. She confirmed that the plaintiff is her mother and that she was travelling with her mother in the same vehicle on 25 September 2013. She testified that after coming out of the shopping centre, her mother who was the driver of the vehicle turned left. At that stage she was looking at the grocery bags and when she looked up at her mother, she saw a vehicle "*slamming*" brakes. She was at that stage seated on the front passenger seat. When the collision occurred their vehicle was stationary at the stop sign and when she looked at her mother she saw the red VW Chico vehicle coming to them. Her mother could not do a thing to avoid the collision as their vehicle was stationary. After the collision her mother's door could not open and the front part of the insured vehicle was damaged.

[10] In cross-examination, she testified that when she looked up and heard brakes screeching they were still at the stop sign and that happened very fast. She only saw the vehicle after the impact. She cannot tell why the vehicle which was travelling on the right side lane of the road passing in front of the stop sign ended up coming to their vehicle. She is not hundred percent sure that her mother was keeping a proper lookout and cannot say with hundred percent certainty how the collision occurred.

[11] After the evidence of Ms Pike the plaintiff closed her case and the defendant also closed its case without calling witnesses.

LEGAL PRINCIPLE

[12] The *onus* is on the plaintiff to prove, on a balance of probabilities, negligence on the part of the insured driver. (See *RAF v Mgweba* 2005 (1) All SA 646 (SCA).)

[13] The applicable test is how a reasonable person would have acted under the same specific conditions prevailing at the time of the accident, as experienced by the driver of the motor vehicle whose conduct is being scrutinised. (See *Minister of Defence v African Guarantee and Indemnity Co Ltd* 1943 AD at 150.)

[14] In *Norwich Union Fire Insurance Society Ltd v Chiduku* 1971 (1) SA 599 (RA) Beadle CJ stated:

"It is as well to point out first the high duty of care that sits upon a motorist who turns across the path of oncoming traffic in an intersection. This high duty of care has been stressed in a number of cases, referred to by the learned Judge, one of the more recent of which is the case of R v Clarke (judgment no. AD 174168). The general principle laid down in the cases is that a motorist should not proceed to turn across the path of oncoming traffic unless and until he is quite satisfied that he is safe to do so ..."

[15] The fact that the driver in the street controlled by a stop sign is bound to stop before entering the intersection, does not entitles the driver in the through street to completely ignore a vehicle approaching a stop sign. (See *Protea Assurance Co Ltd v LTA Building (SWA) Ltd* 1988 (1) SA 303 (A).)

EVALUATION OF EVIDENCE

[16] A proper look at the sketch-plan detailing the circumstances pertaining to how the collision occurred, signed by both the plaintiff and the insured driver reveals the following:

- 16.1 That motor vehicle "A" which was driven by the plaintiff was turning right and the insured driver was proceeding straight on his lane of

travel;

16.2 The quality of the road surface was good, dry, with a clear weather and the collision happened at daylight;

16.3 Under obstruction, there was another vehicle which was identified as vehicle "C", which unfortunately drove away after the collision; and

16.4 The plaintiff's vehicle was damaged on the right front and the insured driver's vehicle damage on the left front.

[17] Ms Pike's evidence is not of much assistance to me in determining how the collision occurred for the following reasons:

17.1 She was looking at the grocery bags;

17.2 All of a sudden she heard brakes screeching;

17.3 She does not know how it happened that the insured vehicle came to their vehicle;

17.4 She only saw the insured vehicle after the impact and she cannot say with certainty how the collision occurred.

17.5 The insured driver did not testify in his matter and as already remarked about the evidence of Ms Pike, I am left with the evidence of the Plaintiff to scrutinize as to who is the cause of the collision.

[18] Looking at the evidence of the plaintiff, when she arrived at the stop sign, there was a vehicle on the side which was obstructing her proper view of traffic passing in front of the stop sign. In her own words she said she could not properly make an observation of traffic travelling on that road because of this stationary vehicle.

[19] It is my considered view that faced with such circumstances it was not safe for the plaintiff to move away from the stop sign under such circumstances it was required of the plaintiff to stop at the stop sign and not move until should traffic was clear for her before interfering the road in front of the stop sign.

[20] In examining the version presented by the plaintiff that the insured vehicle collided with her vehicle while her vehicle was stationary at the stop sign that

cannot be probable.

[21] If that was the true position, one would have expected the damage on the plaintiffs vehicle to be on the side of her vehicle and damage on the insured vehicle on the front. No damage is mentioned on the Plaintiff's drivers' side of the vehicle in the sketch-plan, despite the Plaintiff testifying that she could not open her door after the collision, because it was damaged.

[22] It is therefore my considered view that the plaintiff drove away from the stop sign, without satisfying herself whether or not it was safe for her to move away from that position. Then colliding with the insured vehicle which was travelling on the far right hand of the insured driver's lane of travel. Hence the damage was on her right front of her vehicle and the insured vehicle damaged on its front left part.

[23] Accordingly, I am of the opinion that the plaintiff failed to keep a proper lookout, failed to exercise reasonable care and failed to take reasonable steps to avoid colliding with the insured driver. There is insufficient evidence before me to come to the conclusion that the insured driver was negligent and he is the sole cause of the collision.

ORDER

[24] I therefore make the following order:

24.1 The plaintiffs claim is dismissed.

24.2 The plaintiff is ordered to pay the costs of the defendant.

M J MOSOPA

**ACTING JUDGE OF THE HIGH COURT
GAUTENG LOGAL DIVISION, JOHANNESBURG**

APPEARANCES

For plaintiff : Adv J Bischoff

Instructed by : Kritzinger Attorneys

For defendant : Adv S K Mojamabu

Instructed by : Morare Thobejane Inc

Date of hearing : 8 November 2018

Date of judgment : 22 February 2019